

**OPINION  
52-22**

December 8, 1952            (OPINION)

DEPOSITORY BOND

RE:   Change of Securities

In yours of December fifth you ask for an interpretation of section 21-0409 North Dakota Revised Code 1943. You indicate that the depository bond as permitted by this section may, on occasion, desire to substitute other securities in the place and stead of securities theretofore deposited. And you suggest the possibility of the Board of County Commissioners adopting a resolution authorizing either the county auditor or the county treasurer to accept such substitutions.

Since section 21-0408 requires the board to approve a bond as to amount and sufficiency, and section 21-0409 provides that the board may accept a pledge of securities in lieu of a bond, and section 21-0411 requires the board, upon the acceptance of any securities as a pledge for repayment of deposits, to make a complete and detailed record of such acceptance and approval it is our opinion that the board itself is charged with a duty to exercise a discretion as to the specific securities acceptable to it when offered in lieu of a bond.

The board must pass upon the sufficiency of the securities, that is, it must determine whether or not, in case of default necessitating a foreclosure of the pledge, the securities pledged would produce sufficient funds to make good the default. This is an exercise of the function of discretion as to the acceptability of the securities offered.

It is our opinion that the board may not delegate the exercise of its function of discretion to either the county auditor or the county treasurer in the matter under consideration. Hence, the board may not adopt such a resolution as is proposed.

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Attorney General